

# DFD

Dutch Farm Design

## General Terms & Conditions

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## ARTICLE 1. | DEFINITIONS

The terms below, starting with a capital letter, are defined as follows in these general terms and conditions.

1. DFD: the private limited liability company Dutch Farm Design B.V., the user of these general terms and conditions, having its registered office at Nijverheidsweg 7, 7921 JH in Zuidwolde (the Netherlands), registered with the Trade Register under Chamber of Commerce number 75992299.
2. Customer: any legal entity or natural person, i.e. acting within the scope of their professional or business activities, with whom DFD has concluded or intends to conclude an Agreement.
3. Parties: DFD and the Customer jointly.
4. Agreement: any agreement between the Parties under which DFD undertakes to perform Work, provide Services and/or deliver Goods to the Customer.
5. Work: physical work (contracting work) at the Customer's location or another location designated by the Customer to which DFD has committed itself in respect of the Customer under the Agreement, including, but not limited to, the installation of installations and systems for the agricultural and food industry and relevant maintenance work.
6. Services: the services within the meaning of Book 7, Section 400 of the Dutch Civil Code to which DFD has committed itself in respect of the Customer under the Agreement, including but not limited to the development, design and engineering of installations and systems for the agricultural and food industry, as well as supervision during the commissioning of installations and systems supplied by DFD at the Customer's location or another location designated by the Customer.
7. Goods: the items to be delivered by DFD to the Customer under the Agreement, irrespective of whether they are sold separately or installed with respect to the performance of Work by or on behalf of DFD. 'Goods' may include, for example, installations and systems for the agricultural and food industry, parts of such Goods, as well as windows, click panels and doors.
8. Maintenance Contract: an Agreement that provides for the periodic performance of maintenance by or on behalf of DFD on the item or items agreed upon.
9. Offer: a Written offer from DFD to the Customer with the intention of establishing an Agreement upon acceptance by the Customer, which may include, but is not limited to, a quotation from DFD or a Maintenance Contract offered by DFD for signing.
10. Written/In Writing: communication in writing, communication by e-mail or any other means of communication that can be equated with this in view of the state of technology and generally accepted standards of communication.

## ARTICLE 2. | GENERAL PROVISIONS

1. These general terms and conditions apply to every Offer, every Agreement and all legal relationships arising between the Parties as a result.
2. The applicability of any general terms and conditions of the Customer is expressly rejected.
3. Deviations from the provisions of these general terms and conditions can only be effected if expressly agreed in writing. Where any agreements expressly made between the Parties in writing deviates from the provisions of these general terms and conditions, the agreements expressly made between the Parties in writing shall apply.
4. The annulment or invalidity of one or more of the provisions of these general terms and conditions or the Agreement as such shall not affect the validity of the other provisions. In that event, the Parties shall enter into mutual consultation in order to reach a replacement arrangement with regard to the affected provision with, where possible, due allowance for the purpose and scope of the original provision.

## ARTICLE 3. | OFFER AND CONCLUSION OF AGREEMENTS

1. Every Offer is without obligation. DFD may revoke an Offer immediately, i.e. as soon as possible upon acceptance by the Customer.
2. If an Offer is based on information provided by the Customer, the Customer guarantees the accuracy and completeness of this information.
3. Obvious errors and mistakes in an Offer shall not be binding on DFD.
4. Without prejudice to the provisions of paragraph 1, every Agreement shall have been concluded from the moment that the Offer is accepted by the Customer as specified by DFD, if DFD has provided any such specifications. If the Customer's acceptance deviates from the Offer, the Agreement will not be concluded in accordance with such deviating acceptance, subject to any provisions to the contrary by DFD.
5. If the Customer concludes the Agreement on behalf of another natural person or legal entity, he confirms his respective entitlement by entering into the Agreement. In addition to this natural person or legal entity, the Customer shall be jointly and severally liable for the fulfilment of the obligations arising from such Agreement.
6. The Customer must observe confidentiality with regard to all information in the Offer and is not allowed to use it for improper purposes, for use or inspection by third parties or for disclosure.
7. If no Agreement is concluded, the Customer must, at DFD's first request, immediately remove the Offer or return it to DFD, while providing evidence of the removal, at his own expense and risk.

## ARTICLE 4. | SCOPE OF THE AGREEMENT

1. Only the provisions in the Offer or the agreements expressly made by the Parties in Writing shall be included in the Agreement. DFD shall not be required to perform any service that is not expressly included in the Agreement in Writing.
2. Requests from the Customer for additional or different services or changes to the agreed performance will only be carried out upon DFD's express advance agreement in Writing.
3. Any additional or different services as referred to in the previous paragraph shall be considered extra work and will be charged by DFD to the Customer at the rates applicable at such time, as well as on any additional conditions set by DFD.
4. If the Customer requests additional services without prior written agreement on the relevant costs and conditions, DFD shall be entitled to refuse these services or, if already performed, to charge the resulting costs to the Customer.
5. The mere fact that DFD performs additional or different services without a prior written agreement on the price does not imply that these services are included in the original price.

## ARTICLE 5. | CANCELLATION OF THE AGREEMENT

1. The terms of cancellation expressly agreed in Writing are binding. In the absence of such expressly agreed terms of cancellation in Writing, DFD shall be entitled to compensation for the full loss of profit resulting from the cancellation in the event of total or partial cancellation of the Agreement by the Customer.
2. The loss of profit referred to in the previous paragraph includes in any case the lost revenue, less any savings for which evidence can be provided resulting from the cancellation for DFD.

#### **ARTICLE 6. | GENERAL OBLIGATIONS ON THE PART OF THE CUSTOMER**

1. The Customer shall provide DFD with all information reasonably relevant to the design and implementation of the Agreement as soon as possible as required for the design or implementation of the Agreement, in full and in the manner prescribed by DFD for this purpose. The Customer guarantees the accuracy of all information provided to DFD.
2. The Customer shall moreover at all times cooperate with DFD to the execution of the Agreement. The Customer will take all reasonable measures for the most effective performance of the Agreement.

#### **ARTICLE 7. | THIRD PARTIES**

1. DFD is at all times entitled to delegate the performance of the Agreement in whole or in part to third parties and consequently, to involve third parties in the performance of the Agreement. The applicability of Book 7, Sections 404 and 407(2) of the Civil Code is excluded.
2. These general terms and conditions have also been stipulated for the purpose of the third parties referred to in the previous paragraph. This involves that, where the right to compliance with the provisions cannot, by their nature or scope, be exclusively reserved to DFD, such third parties may appeal to the provisions contained in these general terms and conditions against the Customer as if they themselves were a party to the Agreement.

#### **ARTICLE 8. | PERFORMANCE AND DELIVERY TIMES**

1. Any performance and/or delivery times to which DFD has committed itself in respect of the Customer are indicative and not deadlines. DFD shall not be in default unless the Customer has given DFD written notice of default, stating a reasonable period for performance, and DFD is still in default after the expiry of the latter period. Consequently, merely exceeding a deadline does not entitle the Customer to terminate the Agreement or to any compensation.
2. The delivery time and/or performance period shall commence on the date of confirmation of the Agreement by DFD, however, not before DFD has been provided with all necessary information and data and DFD has received full payment of any deposit or instalment expressly agreed in Writing.

#### **ARTICLE 9. | CHANGES (ADDITIONAL AND LESS WORK)**

1. Any changes and additional services as referred to in Article 4 will only be implemented in accordance with the change procedure set out in this article.
2. If DFD is prepared to implement the change, an Offer will be submitted by DFD containing:
  - a. a specification of direct and indirect costs, profit and risk, less any cost savings;
  - b. adjustments to the scope, planning or work plan;
  - c. adjustments to the timetable or payment terms.
3. DFD shall be entitled to a reasonable compensation for costs incurred in the preparation of the Offer, irrespective of whether the Parties reach agreement.
4. DFD may propose changes if necessary for the proper performance of the Agreement, provided that the work continues to comply with the agreements made between the Parties. The Customer may accept or reject such proposed changes. This article shall apply upon acceptance.
5. If the amendment procedure is delayed due to circumstances beyond DFD's control, DFD shall be entitled to an extension of the term and/or reimbursement of costs.
6. Absence of a Written order does not affect DFD's right to payment for services rendered.

#### **ARTICLE 10. | DELIVERY OF GOODS**

1. Where relevant to the type of Agreement, the Goods shall be delivered in the order determined by DFD, in order to ensure the most efficient and rapid construction process.
2. The transport of Goods shall be carried out in the most cost-effective manner determined by DFD, at its discretion.
3. Where the Parties have agreed that delivery will take place in accordance with an Incoterm (such as DAP or FOB) within the meaning of Incoterms 2020, the provisions of the relevant Incoterm shall be deemed to form an integral part of the Agreement. In the event of any conflict, the following order of precedence shall apply:
  - a. the provisions expressly agreed in Writing;
  - b. the applicable Incoterm;
  - c. these general terms and conditions.
4. In the event of delivery by container, prices are based on fully loaded containers. Partial deliveries requested by the Customer will incur additional costs entirely borne by the Customer.
5. Returns will only be accepted if DFD has given its express prior consent in writing. Returns are at all times at the expense and risk of the Customer, irrespective of the agreed Incoterm.
6. Any items and/or labour required for the transport of Goods from containers or lorries to the hatchery building, including horizontal and vertical transport, must be provided by the Customer and are at the Customer's expense and risk.
7. If the Customer fails to meet his payment obligations, including obligations under T/T or L/C, the bill of lading will not be released by DFD. All resulting direct and indirect costs will be entirely at the expense and risk of the Customer.
8. If Goods qualify as dangerous goods within the meaning of the applicable international regulations, including the regulations of the International Maritime Organisation (IMO), their transport must comply with all international regulations and obligations applicable at such time. Where an IMO permit is required for the transport of such Goods, this permit must be arranged by the Customer no later than the moment of the conclusion of the Agreement.
9. Adhesives for PVC sewer pipes will be included by DFD in the first shipment of the Goods. Any additional adhesives for insulation materials will be delivered separately.
10. With regard to international deliveries, DFD will provide the Customer with the usual shipping and customs documents, such as packing lists, commercial invoices, any non-wood declarations, certificates of origin and the Bill of Lading, if and as soon as these are available for the shipment in question.
11. If the Customer requires additional documentation or documentation that deviates from usual practice, such as specific certificates, declarations or legalisations, the associated (additional) costs and any delays shall be entirely at the Customer's expense and risk, unless the Parties have expressly agreed upon differing provisions in Writing.
12. If the Goods are delivered in one or more containers, DFD may provide an estimate of the number of containers and their classification. Unless expressly agreed otherwise in Writing, such indications shall be purely indicative. Deviations from the estimated numbers or classifications of containers do not entitle the Customer to terminate the Agreement or to any other form of compensation, except where such deviations evidently and directly cause additional costs for the Customer that should not be borne by the Customer pursuant to the Agreement or these general terms and conditions.

#### **ARTICLE 11. | PERFORMANCE OF WORK AND SERVICES ON SITE**

1. The provisions of this article apply to Work and Services performed at the Customer's location or at another location designated by the Customer and agreed between the Parties.
2. In good time prior to the performance of the Work or Services, the Customer must organise:
  - a freely accessible workplace;
  - the presence of sufficient lighting in all areas where, if applicable, the Goods are to be installed;
  - the availability of ladders and other climbing equipment in compliance with the applicable safety standards;
  - access for persons employed by DFD to the place of performance at the agreed time and for the agreed period;
  - the presence of all items and facilities reasonably required by the persons employed by DFD for the performance of the Work and/or Services, such as water, electricity and sanitary facilities;
  - taking and maintaining all safety and precautionary measures that are reasonably to be expected of the Customer.
3. The Customer must make sure that a solid, level and load-bearing structural surface is available as well as other structural facilities suitable for the placement, positioning and fastening of the Goods to be delivered or installed by DFD. Any imperfections in the structural surface and facilities, as well as any resulting damage or additional costs shall be at the Customer's expense and risk.
4. The Customer guarantees that all safety regulations, local regulations and manufacturer's instructions will be complied with, where relevant to the performance of the Work or Services. Any consequences of the Customer's failure to comply with these regulations will be entirely at the Customer's expense and risk.
5. The Customer is responsible for providing power supply that meets the specifications provided by DFD. In the event that the electrical power supply provided by the Customer does not meet these specifications, DFD shall not be liable for any defects, malfunctions or damage resulting (in whole or in part) from such deviations and DFD shall be entitled to charge the Customer for any additional costs incurred as a result.
6. During installation, reasonable precautions must be taken to minimise fire risks, including compliance with safety regulations, the use of fire-resistant materials and safe working methods for heat-producing activities such as welding, grinding and soldering.
7. The Customer is responsible for providing adequate fire prevention equipment at the workplace, including fire extinguishers and escape routes, unless expressly agreed otherwise in Writing.
8. In the event of a fire during installation, DFD will immediately alert the Customer and, if necessary, notify the competent authorities. DFD will take appropriate measures to limit further damage.
9. Damage resulting from fire will only be recoverable from DFD in the event of intent or gross negligence on the part of DFD.
10. The persons employed by DFD must be able to make use of all items and facilities reasonably required by them at the location of performance free of charge.
11. The Customer must provide a clean, safe and healthy workplace with sufficient storage facilities.
12. The Customer must ensure timely and guaranteed access to all necessary utilities, including electricity, water, gas, compressed air, telecommunications and sewer connections.
13. The Customer is responsible for any delays and costs caused by third parties.
14. The Customer is responsible for securing tools and materials outside working hours.
15. All remaining materials after completion of the project shall continue to be DFD's property.
16. Spare parts may be retained in consultation between the Parties.

#### **ARTICLE 12. | STANDARDS AND LOCAL REGULATIONS**

1. Unless expressly agreed otherwise in Writing, the installations and systems to be designed and built by or on behalf of DFD shall be carried out in accordance with the laws and regulations applicable in the Netherlands and the relevant ensuing (technical) standards, effective at the time of the conclusion of the Agreement.
2. If different or additional local laws, regulations or standards apply in the country or region where the Goods are installed or the Work or Services are performed, the Customer is required to expressly inform DFD accordingly in Writing before the Offer is made, i.e. no later than by the conclusion of the Agreement, and to provide DFD with the relevant documentation.
3. If, after the Agreement has been concluded, it transpires that standards and regulations other than those applied by DFD are applicable, which have not been communicated by the Customer to DFD in a timely manner and in the manner referred to in the previous paragraph, DFD shall not be liable for non-compliance with such local standards and regulations. Any relevant additional costs arising shall in that case be borne entirely by the Customer.
4. If the application of standards and regulations other than those customary in the Netherlands causes adjustments to the design, the Work, Services or Goods, DFD shall be entitled to charge the Customer for the resulting additional costs incurred, as well as any consequences for time limits.

#### **ARTICLE 13. | OBLIGATIONS ON THE PART OF DFD IN THE CASE OF INSTALLATION WORK**

1. The provisions of this article apply exclusively to installation work carried out by or on behalf of DFD.
2. DFD undertakes to inform the Customer if the programme of requirements drawn up by or on behalf of the Customer, the order or Agreement, the information, data or items provided by the Customer, or the changes requested by the Customer, contain errors or defects to the extent that continuation without a warning would contravene the principles of reasonableness and fairness.
3. DFD shall not need to go beyond a general assessment of information, designs, drawings, calculations and specifications provided by or on behalf of the Customer. Inspection of items delivered by the Customer is limited to visual inspection for external damage (where reasonably possible), checking quantities and dimensions and, where feasible, assessing packing lists.
4. DFD will make every reasonable effort to achieve a proper performance of the Work. The scope of this obligation depends in part on the degree of input, influence and information provided by the Customer or by third parties engaged by the Customer.
5. DFD shall undertake to comply with all applicable statutory obligations, as well as the principles of reasonableness and fairness and any customary practices within the industry.
6. DFD shall, upon request, inform the Customer about the progress of the Work and grant the Customer access to the workplace at a time to be agreed upon. If agreed, DFD shall demonstrate through an inspection plan, protocol, logbook or report that the Work meets the requirements of the Agreement.
7. DFD is responsible for repairing any damage to the installation or any part of the installation occurring during or as a result of the performance of the Work prior to completion, unless this damage was not caused by DFD or it would be unreasonable to hold DFD liable for such damage. The parties may agree that the Customer will instruct DFD, in return for payment, to repair damage that is not DFD's responsibility.
8. Upon request and to the best of its ability, DFD shall provide the Customer with instructions regarding the commissioning, decommissioning and use of the installation.

## **ARTICLE 14. | INVESTIGATION AND COMPLAINTS REGARDING GOODS AND WORK**

### Goods

1. If only the sale and delivery of Goods is covered by the Agreement, the Customer must check whether the type and quantity of the Goods match the Agreement at the time of delivery, or immediately afterwards. If the Customer believes that the type and/or quantity of the Goods do not comply with the Agreement, the Customer must immediately notify DFD accordingly. If the Goods are collected by or on behalf of the Customer at DFD's location, the type and quantity of the Goods shall be deemed to comply with the Agreement, and the Goods shall be deemed to be free of visible damage if the Goods have been collected by or on behalf of the Customer without any Written reservation.
2. Complaints regarding defects that were not reasonably visible or could be detected in any other way at the time of delivery must be submitted to DFD in writing within seven days after the Customer became aware of the existence of the defect, i.e. could reasonably have become aware of it.
3. If the Customer fails to complain in a timely manner and in accordance with the provisions of the previous paragraphs, or complains about defects that were previously expressly acknowledged as absent, DFD shall not be subject to any obligation or liability whatsoever as a result of such a complaint by the Customer.
4. Even in case the Customer has filed a complaint in a timely manner, his obligation to pay DFD on time shall continue to be effective.

### Work

5. The Customer has the right to check that the work and the results meet the requirements of the Agreement through inspections, tests or trials.
6. Unless expressly agreed otherwise in Writing, testing by or on behalf of the Customer shall take place in consultation with DFD and shall be at the Customer's expense and risk. DFD shall provide any necessary cooperation within reasonable limits.
7. When exercising his right to inspection, the Customer must limit disruptions in the Work as much as possible. Any resulting delays and/or costs will be borne by the Customer to the extent they are not attributable to DFD. Damage to the installation caused by or during the assessment will be borne by the Customer.
8. Once DFD has stated that the results of the work are ready for acceptance, and the Customer has not approved them in writing within the period set by DFD, or has not accepted them either with or without reservations, or has not rejected them stating the defects, the results of the work shall be deemed to have been tacitly accepted.
9. Minor defects that can be repaired before the next payment deadline do not constitute grounds for refusal of acceptance, provided that such defects do not prevent the installation from operating.
10. Upon acceptance, completion of the results of the work shall be deemed to have been effected. DFD shall be entitled to have completion of the work take place in several partial deliveries of completion.
11. If the results of the work have been tacitly accepted by the Customer, the date of tacit acceptance shall be deemed to be the date of acceptance within the meaning of this article.
12. Tests, inspections and/or verifications relating to the electrical installation must be conducted locally by a certified and independent inspection company, in accordance with the applicable national and international standards. Unless expressly agreed otherwise in Writing, such inspections are not included in DFD's standard activities. An inspection can be organised by DFD at the Customer's request. The relevant costs and any additional Work will be invoiced separately.
13. DFD accepts no liability for defects, shortcomings or any loss resulting from inadequate inspection or the absence of an inspection, if this inspection was not conducted by DFD.

## **ARTICLE 15. | EARLY COMMISSIONING**

1. If the Customer wishes to commission the installation or any part of the installation before the scheduled completion date, the Parties shall follow the procedure described in the article regarding changes (additional and less work).
2. The Customer must approve and officially agree to the completion of the relevant Work in Writing before the date of early commissioning.
3. If the Customer fails to approve the completion and nonetheless starts to use the installation or any part of the installation, the installation shall be deemed to have been accepted and completion to have been effected.

## **ARTICLE 16. | COMPLAINTS REGARDING SERVICES AND INVOICES**

1. The provisions of this article apply to the amount of the invoices and to Agreements that contain provisions for the performance of Services.
2. The Customer must submit any complaint regarding the performance of the Agreement by or on behalf of DFD within seven days after discovery i.e. after he was reasonably able to discover the alleged shortcoming, in writing to DFD, failing which DFD will be deemed to have fulfilled its obligations in this regard and the Customer will no longer be able to appeal to any shortcoming on the part of DFD in this regard.
3. Complaints regarding the amount of the invoices must be submitted to DFD in writing within seven days from the invoice date, failing which the Customer's right to object with respect to this will lapse.
4. If the Customer fails to complain in time, DFD shall not be subject to any obligation or liability arising from such a complaint by the Customer.
5. Even if the Customer complains in a timely manner, his obligation to pay in full and on time, as well as his obligation to continue to comply with the Agreement, will continue to be effective.

## **ARTICLE 17. | BASIC AND DETAILED ENGINEERING**

1. Basic engineering will be final after order confirmation.
2. Detailed engineering may be adjusted due to practical or structural changes. DFD will communicate such changes in a timely manner and implement them in consultation with the Customer.

## **ARTICLE 18. | GUARANTEE**

### Engineering

1. Engineering will be performed by DFD based on the information provided by the Customer. The Customer guarantees the accuracy and completeness of all information on which the engineering is based.
2. Engineering errors attributable to DFD will be adjusted by DFD for its own account.
3. The guarantee on engineering shall expire after successful commissioning of the project, unless the Parties have expressly agreed otherwise in Writing.

### Goods

4. The guarantee on Goods is in accordance with the applicable manufacturer's guarantees, on the proviso that a minimum guarantee period of one year applies at all times, unless expressly agreed otherwise in Writing.
5. Goods covered by the guarantee will be repaired or replaced by DFD free of charge. Transport costs, including the costs of shipping, handling and any import formalities, shall be for the account of the Customer.
6. The guarantee period for machines commences upon commissioning of the machine in question, however, no later than eighteen (18) months after the purchase.
7. Goods must be processed and installed within a reasonable period of time in accordance with the applicable guidelines. Long-term storage may cause loss of quality, weather damage or other types of damage, for which DFD accepts no responsibility. Guarantee claims shall lapse in such cases.

#### Installation work

8. If the installation work does not comply with the applicable engineering standards, DFD will repair the relevant Work for its own account.
9. Any changes, modifications or other work on the installation carried out without the prior express and written consent of DFD will immediately invalidate the applicable guarantee at such time.

#### Maintenance

10. The guarantee on maintenance work is limited to the proper performance of the agreed inspections, settings and adjustments. Any repairs or replacement of parts shall only be covered by the guarantee if and as expressly agreed between the Parties in writing.

#### General

11. Any form of guarantee will be invalid if the Customer fails to strictly comply with the instructions for use, installation, maintenance or safety provided by DFD, unless the Customer is able to demonstrate that such failure was not reasonably the cause of the defect.
12. The guarantee will be invalid in the event of improper, in accurate or more intensive use of Goods or the work delivered than reasonably to be expected on the basis of their nature and intended use, including use in circumstances for which the Goods are not designed, based on evidence.
13. The guarantee will be invalid if the Customer or a third party has carried out repairs, modifications, adjustments or maintenance work on the Goods or the work delivered without the prior express and written consent of DFD.
14. The guarantee will be invalid if a defect is the result of external causes, including extreme weather conditions, corrosion due to aggressive substances, flooding, fire, vermin, vandalism, defective third-party accessories or unsuitable power supplies or connections.
15. The guarantee will be invalid if the Customer has failed to complain in good time and in accordance with Articles 14, or if DFD has not been given the opportunity to investigate and/or repair the defect before the Customer engages third parties.
16. The guarantee will be invalid if the Customer has failed to fulfil his payment obligations under the Agreement at the time he appeals to the guarantee.

### **ARTICLE 19. | MAINTENANCE CONTRACTS**

1. A Maintenance Contract contains provisions for preventive periodic maintenance of the item or items expressly agreed in Writing.
2. DFD shall inform the Customer in writing as soon as possible, and preferably at least three weeks prior to the start of the maintenance, of the proposed dates for the maintenance visit. If DFD gives less than three weeks' notice, the Customer shall be entitled to refuse the proposed time for valid reasons, on the proviso that the Customer informs DFD of these reasons in writing and without delay.
3. A Maintenance Contract shall be entered into for the specific term expressly agreed in Writing and ends by operation of law upon expiry of this specific term.
4. Article 11 shall also apply mutatis mutandis to the performance of maintenance work on site.
5. If materials or parts need to be replaced during maintenance, the Customer will need to make sure that such parts shall be available in good time, unless the Parties have expressly agreed otherwise in Writing.
6. The Customer must make sure that the necessary resources and manpower will be available before commencement of the Work. Incomplete or untimely availability of these items will be entirely at the expense and risk of the Customer and may result in delays, additional work and additional costs.
7. In the event of an emergency, DFD will, depending on the nature and urgency of the problem, respond within a reasonable period of time, with a target response time of four days.
8. The costs of travel and accommodation arrangements with respect to an emergency visit shall be fully borne by the Customer, unless expressly agreed otherwise in writing. If DFD needs to deploy additional service packages or materials for the emergency situation, the respective costs shall be invoiced separately to the Customer.
9. Remote technical support will be charged separately by DFD to the Customer based on the rate per service call expressly agreed in Writing for this purpose.
10. Depending on the type of support, additional costs may be charged to the Customer, including costs for travel, accommodation, planning or the deployment of third parties.
11. Upon completion of the maintenance, DFD will provide the Customer with a written service report stating its findings, recommendations and any necessary follow-up actions. The Customer must keep this report in a safe place and follow up on all recommendations in a timely manner.
12. Any follow-up actions, repairs and replacements recommended in the service report will only be carried out at the rates applicable at that time, unless the Parties have expressly agreed otherwise in Writing.

### **ARTICLE 20. | FORCE MAJEURE**

1. DFD shall not be required to fulfil any obligation under the Agreement if and for as long as it is prevented from fulfilling the obligation by a circumstance that cannot be attributed to DFD by virtue of the law, a legal act or generally accepted standards in social and economic life (force majeure). In addition to the definitions in the relevant provisions in legislation and case law, force majeure means all external causes of which DFD has no control and which impede or seriously hinder the (further) performance of the Agreement.
2. If the force-majeure situation continues for more than one hundred and twenty (120) consecutive days, the Parties shall enter into mutual consultation in order to discuss an appropriate solution.
3. If, following the provisions of the previous paragraph, the Parties decide to terminate the Agreement in whole or in part, DFD shall in any case be entitled to invoice the part of the Agreement that has already been performed and the part that can still be performed separately, as if it were an independent Agreement.
4. Any loss resulting from force majeure shall not at any time whatsoever be eligible for compensation.

### **ARTICLE 21. | SUSPENSION AND TERMINATION**

1. DFD is entitled to suspend the further performance of the Agreement if and for as long as the Customer fails to fulfil his due and matured (payment) obligations under the Agreement (including the provisions of these general terms and conditions).
2. DFD is entitled to terminate the Agreement in whole or in part with immediate effect if the Customer fails to fulfil his obligations under the Agreement, or fails to do so on time or in full. In the even that the fulfilment of the Customer's obligations in respect of which he is in default is not permanently impossible, the right to terminate shall only arise after the Customer has been given written notice of default by DFD, in which notice of default a reasonable period is specified in which the Customer will still have the opportunity to fulfil the obligations and the fulfilment has nonetheless not taken place after the expiry of the latter period. The provisions of the previous sentence shall not apply if DFD concludes from a communication from the Customer that the Customer will continue to fail to fulfil his obligations, in which case a notice of default has no purpose and termination can take place without a notice of default.
3. The provisions of the previous two paragraphs apply unless the Customer's failure, given its special nature or minor significance, does not reasonably justify such suspension or termination with its consequences.
4. Unless the Customer has already fully fulfilled his (future) payment obligations in respect of DFD, DFD shall be entitled to terminate the Agreement in whole or in part with immediate effect if the Customer is in a state of bankruptcy, any attachment has been levied against his goods or he is unable to freely dispose of his assets in any other respect.
5. Further to this, DFD is entitled to terminate the Agreement in whole or in part if circumstances arise to the extent that fulfilment of the Agreement is impossible or that DFD cannot reasonably be expected to maintain the Agreement unchanged.

6. The Customer shall at any time whatsoever be entitled to any form of compensation with respect to DFD's right of suspension and/or termination exercised pursuant to this article.
7. If the reason causing the suspension or termination of the Agreement can be attributed to the Customer (which only in the situation described in paragraph 5 may not always be the case), DFD shall be entitled to claim compensation from the Customer for the damage suffered by DFD as a result.
8. If DFD terminates the Agreement pursuant to this article, all outstanding claims against the Customer shall be immediately due and payable.

#### **ARTICLE 22. | PRICES, COSTS AND TERMS OF PAYMENT**

1. The Offer shall state the rates at which the Agreement will be performed or the periodic payment under the Maintenance Contract as accurately as possible. All additional costs that are not expressly included in the prices, such as cost of transport, cost of accommodation, meals, local transport, materials, local labour and basic tools, shall be borne entirely by the Customer, unless the Parties have expressly agreed otherwise in Writing.
2. All amounts stated by DFD and payable by the Customer are exclusive of VAT, unless expressly stated otherwise.
3. If and as the Offer states that the prices included in the offer are based on monthly prices or other variable price bases, the actual price payable by the Customer will be determined on the basis of the cost prices applicable upon the conclusion of the Agreement.
4. In that case, DFD shall be entitled to fully charge any price changes in the underlying cost-price factors (such as purchase prices, wage and transport costs and exchange rates) to the Customer.
5. Without prejudice to any express agreements made in Writing in this regard, DFD shall be entitled to demand full or partial payment in advance.
6. Without prejudice to the other provisions of these general terms and conditions regarding payment, if and as the Parties have agreed that payment for the Goods is linked to the issue of transport documents (such as a bill of lading), the Customer shall be bound by payment of 100% of the invoice value of the shipment in question before DFD will be required to issue the relevant transport document.
7. If the Customer fails to meet his payment obligations or fails to do so on time, DFD shall be entitled to suspend the issue of the transport documents. All resulting direct and indirect costs and damage, such as cost of storage, demurrage, additional port charges and fines, shall be entirely at the expense and risk of the Customer.
8. Payments must be made by bank transfer within the payment term expressly agreed in writing, failing which the term stated by DFD on the invoice shall be binding.
9. Payment must be made without any recourse to suspension or offsetting any amounts.
10. DFD is entitled to submit any invoices for the Customer exclusively by email.
11. In the event that the Customer liquidates his business or transfers it to a third party, is in a state of bankruptcy, has applied for (provisional) suspension of payments, any attachment has been levied against his goods, as well as in the event that the Customer is unable to freely dispose of his assets in any other way, the claims against the Customer shall be immediately due and payable.
12. If timely payment is not made, the Customer shall be in default by operation of law. From the day the Customer is in default, the Customer shall be required to pay a monthly 2% interest on the outstanding amount, while a part of a month qualifies as a full month.
13. All reasonable costs, such as judicial, extrajudicial and enforcement costs, incurred in order to obtain the amounts due and payable by the Customer shall be borne by the Customer.

#### **ARTICLE 23. | LIABILITY AND INDEMNIFICATION**

1. The Customer shall bear liability for any loss caused by inaccuracies in the information provided by the Customer, any other failure to fulfil the Customer's obligations arising from the law or the Agreement, as well as any other circumstance that cannot be attributed to DFD.
2. DFD bears no liability for construction delays or financial loss resulting from such delays.
3. DFD shall never bear any liability for loss caused by third parties not contracted by DFD for the performance of the Agreement.
4. DFD's liability for indirect loss, consequential loss, lost profit, lost savings, lost revenue, reduced goodwill, reputational damage, loss due to business interruption, mutilation or loss of data and all other forms of loss/damage other than those mentioned in the following paragraph, on any account whatsoever, is excluded.
5. The limitations of DFD's liability included in these general terms and conditions do not apply if the loss is due to intent or deliberate recklessness on the part of DFD or its managerial subordinates. DFD can only be held liable for direct loss attributable to DFD. Direct loss only includes:
  - reasonable costs incurred with regard to the determination of the cause and extent of the loss, insofar as the determination relates to loss within the meaning of these general terms and conditions;
  - any reasonable costs necessary to bring DFD's defective performance into line with the Agreement;
  - reasonable costs incurred to prevent or limit loss, insofar as the Customer demonstrates that these costs have resulted in a limitation of the direct loss referred to in these general terms and conditions.
6. In the event that, notwithstanding the provisions of the remainder of these general terms and conditions, DFD is liable for loss, this liability will be limited to repair or replacement of the defective performance, i.e. with regard to that part of the Agreement to which DFD's liability is related. If such repair or replacement is not possible or evidently has no purpose for the Customer, DFD's liability shall be limited to once the invoice value of the Agreement, i.e. that part of the Agreement to which the liability is related, on the proviso that DFD's liability shall in any case at all times be limited to a maximum of the amount effectively paid in the relevant case under the liability insurance taken out by DFD, plus any excess applicable to DFD under such insurance.
7. Without prejudice to the limitation periods referred to in Articles 14 and 16, the limitation period for all legal claims against DFD is 12 months after the claim's inception.
8. The Customer indemnifies DFD against any claims from third parties who are caused a loss with respect to the performance of the Agreement, the cause of which is attributable to (a) party other than DFD. In the event that DFD is held liable by third parties on account of this, the Customer shall be required to assist DFD both in and out of court and to do everything that can reasonably be expected of him in that case without delay. If the Customer fails to take appropriate action, DFD shall be entitled, without notice of default, to take such action by itself. Any resulting costs and loss incurred by DFD and third parties shall be fully borne by and at the risk of the Customer.

#### **ARTICLE 24. | RETENTION OF TITLE**

1. The title to delivered Goods shall continue to be vested in DFD up to full compliance by the Customer with all his payment obligations under the relevant Agreement and any other Agreements concluded between the Parties.
2. The Customer is prohibited from selling, pledging or in any other manner encumbering the Goods subject to retention of title.
3. In the event that third parties seize the Goods subject to retention of title, or wish to establish or assert rights on the Goods, the Customer shall be required to notify DFD accordingly without delay.
4. In the event of a breach of the provisions of this article, the amount due by the Customer under the Agreement shall be immediately due and payable in full.

5. The Customer shall give DFD or third parties designated by DFD unconditional permission to enter all locations where the Goods subject to retention of title are located. The Customer must provide DFD with all information upon first request in order to enable DFD to exercise its property rights.

#### **ARTICLE 25. | INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

1. The title to all intellectual and industrial property rights to Goods, data and technical information supplied to the Customer shall continue to be vested in DFD. The Customer only acquires the right to use them.
2. The intellectual property rights to documents such as designs, drawings, technical descriptions and specifications provided by DFD to the Customer will continue to be held by DFD. Only any physical copies, where applicable, will be the Customer's property. These documents may only be used in accordance with the rights granted and after the Customer has fulfilled all his financial obligations in respect of DFD.
3. The Customer is not allowed to reconstruct the installation in whole or in part on the basis of DFD's design without the prior express and written consent of DFD. Such consent may be subjected to conditions by DFD, including the payment of an additional fee.
4. If the Agreement is terminated due to an attributable failure on the part of DFD, the Customer may use the design to have the installation performed by a third party. DFD bears no liability for any resulting defects.
5. Software is licensed by DFD on a non-exclusive basis, exclusively for internal use within the Customer's organisation and only for the installation with regard to which the rights of use have been granted.
6. The Customer is not allowed to provide the software to third parties or reproduce the software, other than for any required error adjustments. Source code and technical documentation will only be provided if expressly agreed in writing.
7. DFD has the exclusive right to apply for patents in its own name and at its own expense for inventions created during the performance of the Agreement. If a patent is granted, the Customer shall obtain a non-transferable, free right of use, with regard to which DFD's prior written consent continues to be required for specific applications. Consent may only be refused in the event of an evidential conflict of business interests.

#### **ARTICLE 26. | PROHIBITION ON EMPLOYING EMPLOYEES AND SECONDEES**

1. During the term of the Agreement and for one year after its termination, the Customer is not allowed to employ or professionally engage any DFD employees who were involved in the work.
2. In the event of secondment, the Customer is not allowed to employ seconded persons during the secondment or for one year after its expiry.
3. In the event of a breach of the provisions of this article, the Customer shall be due to pay to DFD, without any notice of default being required, a penalty payable on demand of €25,000 for each breach, as well as €1,000 for each day or part of a day that the breach continues, without prejudice to DFD's right to claim performance and/or full compensation, where the effective loss suffered by DFD exceeds the forfeited penalty.

#### **ARTICLE 27. | SOCIAL MEDIA**

1. DFD reserves the right to publish project-related media with the Customer's consent.
2. Confidential business information of the Customer will not be shared.
3. The Customer may state restrictions or preferences in advance with regard to the use of project-related media.

#### **ARTICLE 28. | FINAL PROVISIONS**

1. All Agreements and all ensuing legal relationships between the Parties shall exclusively be governed by Dutch law. The applicability of the Vienna Sales Convention (CISG) is excluded.
2. Prior to taking legal action, the Parties undertake to make every effort to settle the dispute in mutual consultation.
3. Only the competent court within the district of the District Court of Noord-Nederland shall in the first instance be designated to hear any legal disputes between the Parties, without prejudice to DFD's right to designate another court having jurisdiction under the law.
4. The Dutch text of these general terms and conditions shall be decisive with regard to their interpretation, unless expressly agreed otherwise in writing.